IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No. 79 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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REGISTRAR OF COMPANIES, GUJARAT - Appellant(s)
Versus
ADANI EXPORTS LTD. & 4 - Opponent(s)

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Appearance :
MR PS CHAMPANERI for Appellant(s) : 1, present
MR SN SOPARKAR, SR.ADVOCATE with MR AMAR N BHATT for Opponent(s) : 1 – 4 present
MR MIHIR H JOSHI, SR.ADVOCATE with MR AMRITA THAKORE for Respondent No. : 5 present
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 08/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Present is an appeal under Section 10F of the Companies Act, challenging the order dated 9th March, 2004, passed in C.P. No. 98/621A/CLB/WR/2003, by the Company Law Board, Western Region Bench, Mumbai.

2. Facts necessary for disposal of the present appeal are that the respondent company had made contributions of Rs. 25,000/- to Gujarat Pradesh Youth Congress on 12.5.98 and a sum of Rs. 15.00 lacs to All India Youth Congress committee on 24.8.99. Under the law, specially under Section 293A(4), these contributions made to the political parties were required to be specifically disclosed in the profit and loss account of the respective years, which the company failed. Instead, these contributions were shown as `miscellaneous expenses' without any details. The Registrar of Companies issued a show cause notice dated 17.9.2003 to the company as to why the company and the officers in default should not be prosecuted in terms of Section 293A[5] of the Companies Act for non-disclosure. The company filed an application before the Registrar of Companies for compounding the offence and also filed a

writ petition – Special Civil Application No. 13946 of 2003 in this High Court praying for an injunction against the Registrar of Companies for initiating any penal action against the company and other officers of the company. This Court granted interim stay, but also directed the Registrar of Companies to dispose of the compounding application filed by the company and its officers. The Registrar of the Companies dismissed the compounding application on the technical ground that the same was filed under Section 293 instead of Section 293A of the Companies Act. Thereafter, the company filed yet another application to the Registrar of Companies, who in turn, forwarded the same to the Regional Director. The Regional Director advised the Registrar of Companies to forward the said application to the Board stating that the offence against the officers in default was not compoundable in view of the provisions of Section 293A[5] of the Act.

3. The company and its officers submitted before the Board that provisions of Section 293A[5] would not cover every lapse or default provided in other sub-sections of Section 293A of the Act, but would cover a case relating to contributions in contravention of the

provisions of Section 293A. The Revenue, on the other hand, submitted that as the language employed in sub-section[5] of Section 293A reads that 'if a company makes any contribution in contravention of the provisions of section 293A,' then, each and every contravention as detailed in every sub-sections, namely, sub-sections [1] to [4] of Section 293A would be covered.

4. After hearing the parties and giving different examples of other sections and arrangement of sub-sections of particular sections, the Board observed that wherever the legislature intended that each and every contravention covered under a particular section is taken to be an offence, then, such language has been so employed in the penal provision, while in particular sections, particular actions or omissions only have been made liable for penal action and as the present is a case relating to non-disclosure of the contributions given to the political parties, which are covered under sub-section [4] and not under sub-section[1] or [2] of Section 293A of the Act, provisions of sub-section [5] would not be applicable. It accordingly overruled the objections raised by the

Revenue and ultimately observed that the matter would be covered under the sweep of Section 629A of the Act and the authority would be competent to compound the offence. It accordingly compounded the offence on deposit of Rs. 5,000/-.

5. Being aggrieved by the said order and the interpretation put forth by the Company Law Board, the Revenue is before this Court. Mr. P.S. Champaneri, learned counsel for the appellant has taken us through the scheme of the Act and made his detailed submissions, which we shall take up one by one.

6. Section 293A is in relation to political contributions. Though title of Section 293A says 'Prohibitions and restrictions regarding political contributions', but the scheme of this Section is to permit some of the companies to make political contributions and disclose the same in their profit and loss account.

Section-293A reads as under:-

293A. [1] Notwithstanding anything contained in any other provision of this Act,--

[2] no Government company; and

[b] no other company which has been in existence for less than three financial years, shall contribute any amount or amounts, directly or indirectly,__

[i] to any political party; or

[ii] for any political purpose to any person.

[2] A company, not being a company referred to in clause [a] or clause [b] of sub-section [1], may contribute any amount or amounts, directly or indirectly,__

[a] to any political party; or

[b] for any political purpose to any person;

Provided that the amount or, as the case may be, the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed five per cent of its average net profits determined in accordance with the provisions of sections 349 and 350 during the three immediately preceding financial years.

Explanation: Where a portion of a financial year of the company falls before the commencement of the Companies (Amendment) Act, 1985, and if a portion falls after such commencement, the latter portion shall be deemed to be a financial year within the meaning and for the purposes, of this sub-section:

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of directors and such resolution shall, subject to the other provisions of this section, be deemed to be

justification in law for the making and the acceptance of the contribution authorised by it.

(3) Without prejudice to the generality of the provisions of sub-sections (1) and (2), __

[a] a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to effect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

[b] the amount of expenditure incurred, directly or indirectly, by a company on advertisement in and publication (being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like) by or on behalf of a political party or for its advantage shall also be deemed, __

(i) where such publication is by or on behalf of a political party to be a contribution of such amount to such political party, and

(ii) where such publication is not by or on behalf of but for the advantage of a political party, to be a contribution for a political purpose to the person publishing it.

(4) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party or for any political purpose to any person during the financial year to which that account relates, giving particulars of

the total amount contributed and the name of the party or person to which or to whom such amount has been contributed.

(5) If a company makes any contribution in contravention of the provisions of this section,__

(a) the company shall be punishable with fine which may extend to three times the amounts so contributed; and

(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.__ For the purposes of this section, “political party” means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).

7. Sub-section [1] of Section 293A provides a ban on government company, company which is in existence for less than three years, from making any contribution directly or indirectly to any political party or for any political purpose to any person. If any company makes contribution in contravention of sub-section [1] of Section 293A, then, company or its officers would be liable under sub-section [5] of Section 293A.

8. Sub-section [2] of Section 293A provides that a company, which is not a company falling in clause [a]

or clause [b] of sub-section [1], may contribute any amount or amounts directly or indirectly to any political party or for any political purpose to any person. However, the words 'may contribute any amount or amounts' have been restricted under the proviso appended to sub-section [2]. Proviso says that the amount or, as the case may be, the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed five per cent of its average net profits determined in accordance with the provisions of sections 349 and 350 during the three immediately preceding financial years. The second proviso says that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of Board of Directors etc.

9. If any company makes any contribution to any political party or for any political purpose to any person exceeding five per cent of its average net profits determined in accordance with the provisions of Sections 349 and 350 during the three immediately preceding financial years, then, such company or its officers can be said to have contributed in

contravention of the provisions of Section 293A. Similarly, if a company or its officers make a contribution to any political party or for any political purpose to any person without a resolution of the Board of Directors, then, such contribution shall be deemed to be in contravention of the provisions of Section 293A.

10. Sub-section [3], for the present is not relevant, therefore, we are not dealing with sub-section [3] of Section 293A.

11. Sub-section [4] of Section 293A says, rather requires every company to disclose in its profit and loss account any amount or amounts contributed by it to any political party or for any political purpose to any person during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party or person to which or to whom such amount has been contributed.

12. The requirement of sub-section [4] is disclosure of the particular facts in the profit and loss account of the company. The company would be obliged to disclose

the amount or amounts in its profit and loss account, the purpose for which it has been given and the names of the person or party to whom it has been given during the financial year to which the account relates. The company would also be obliged to give particulars of the total amount contributed and the name of the party or person to which or to whom such amounts have been contributed.

13. A fair reading and understanding of sub-section[4] of Section 293A of the Act would make it clear that it has nothing to do with the contributions made in contravention of sub-section [1] or sub-section [2]. In fact, the provisions of the Act require a company to disclose particular things in its profit and loss account. Sub-section [4] of Section 293A relates to disclosure of the information and has nothing to do with any contributions made in contravention of the provisions of Section 293A.

14. Sub-section [5] says that if a company makes any contribution in contravention of the provisions of sub-section [5] -

[a] the company shall be punishable with fine which

may extend to three times the amount so contributed; and

[b] every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

15. Opening words of sub-section [5] are 'if a company makes any contribution in contravention of the provisions of this section'. The legislature, while using the words 'contribution in contravention of the provisions of this section', really meant to say that if any contribution is made in contravention of the provisions of this Section, then, one would be liable for penal action. Sub-section [5] does not say that non-disclosure of the contribution, which is legal or illegal, which is valid or invalid, which is in accordance with the provisions of this Section or is not in accordance with this Section, should also be held liable for penal action. Sub-section [5] simply says that if there is any contribution in contravention of the provisions of Section 293A, then only, a company or its officers can be held liable.

16. It is to be seen that sub-sections [1] and [2] of Section 293A are dealing with the authority to contribute and the extent of contribution. They do not deal with the disclosure relating to contribution. If there is any contribution in contravention of the provisions of Section 293A, then only, an action can be taken under sub-section [5] of Section 293A and not other wise. Non-disclosure of the information would be a wrong committed by a party, but would not be answerable to action under sub-section [5] of Section 293A.

It is not in dispute before us that the respondent company does not fall under sub-section [1] of Section 293A nor it is in dispute before us that the contribution made by the respondent company is in contravention of sub-section [2] of Section 293A. The controversy centers around the only question that whether non-disclosure of contribution is punishable under sub-section [5] of Section 293A.

17. The arrangement of a Section and scheme of a particular section is always of importance. A particular section may be divided into different parts. Particular parts of the section or particular sub-section of the main section may be dealing with

different eventualities, while, others may be dealing with different aspects of the legal provision. In a given case, before applying a penal provision, the Court is required to see that whether each and every lapse has been made liable or answerable for penal action or a particular wrong only would invite penal action. It is trite law that penal provisions are to be strictly observed and interpreted.

18. The principles of *ejusdem generis* would certainly apply to a case where particular sub-sections are to be read in conjunction with other sub-sections of a section. A word which is not in the law cannot be read to favour the revenue nor an authority can be given to the revenue to prosecute anybody in absence of a provision so authorizing them. Section 293A is to be read and understood in light of the intent of the legislature.

19. In the present case, the principles of *reddendo singula singulis* would be applicable. The said principle says that a particular phrase or subject is to be connected with or read with another provision or another qualifying statement for getting a legal result.

20. Justice G.P.Singh, in his celebrated work “Interpretation of Statutes”, has given best example of the principles of *reddendo singula singulis.* He has said in the statement “one should not draw or fire a sword or a gun in the public”. According to the author, the word “sword” is to be read with the word “draw”, while the word “gun” is to be read with the word “fire”, because, a sword can never be fired. In the present matter according to us, when the legislature, in its wisdom has observed that the legislature itself has made a distinction between contribution and disclosure of contribution, then, contribution cannot be read to mean a disclosure.

21. It is further to be seen that the contribution would come first and the disclosure later. A contribution, if is in contravention of sub-section [1] or sub-section [2] of Section 293A, is made punishable under sub-section [5] of Section 293A, then, by no stretch of imagination, it can be said or argued that everything relating to contribution, whether it is a non-disclosure would also be punishable. If the intention of the legislature was to observe that non-disclosure

would also be an offence, then, the legislature could have used the phrase 'if company contravenes any provisions of this section'. The legislature, instead of making every sub-section subject to sub-section [5], in its wisdom has observed that any contribution in contravention of the provisions of Section 293A would be punishable under law. To find that the contribution is in contravention of the provisions of sub-sections of Section 293A, one must refer to the provisions which deal with contravention. Contravention of sub-sections [1] and [2] of Section 293A would provide a cause to the revenue or Registrar of Companies to prosecute the wrong-doer but sub-section [4] would only require the company to make a disclosure. Cause and consequences are connected with each other.

22. After giving our thoughtful consideration to the facts and for the reasons stated aforesaid, we are unable to hold that the Board was wrong or unjustified in observing that the action would not be covered under sub-section [5] of Section 293A or was unjustified in restricting application of sub-section [5] to contribution made in contravention of the provisions of

the Act.

23. Mr. Champaneri lastly submitted that the phrase 'contribution in contravention' should be read to mean that non-disclosure is also included in it. According to him, deeming fiction should be applied to the phrase while interpreting it.

We are unable to accept the argument. When the provisions of law are clear then outer assistance cannot be taken. A deeming provision, even otherwise, should also be provided in the law itself. In the provisions of 'Narcotic Drugs and Psychotropic Substances Act' and 'Prevention of Corruption Act', there are deeming provisions and the Court is obliged to deem certain facts to oust. In the present case, law does not say that the non-disclosure would be deemed to be an offence or it would be presumed that the non-disclosure would amount to contribution in contravention.

24. So far as the imposition of fine of Rs. 5,000/- as compounding fee is concerned, it was submitted at Bar that if non-disclosure is taken to be an independent wrong, then, the provisions of Section 629A only would apply. Section 629A provides that where special

provisions are not made in relation to contravention of a particular provision of the Act, then, Section 629A would be applicable. It has not been brought to our notice that act of non-disclosure of contribution in profit and loss account would lead to a jail sentence or imprisonment in any other provisions of the Act. If that be so, then, Section 629A would certainly cover the field and we would be justified in observing that the Board was justified in directing compounding on payment of Rs.5,000/-.

25. For the reasons aforesaid, we find no force in this appeal. It is accordingly dismissed. No costs.

[R.S.GARG, J.]

[BANKIM N.MEHTA, J.]

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